

ShawPittman

A Law Partnership Including Professional Corporations

STEPHEN J. BERMAN
202.429.4683
stephen.berman@shawpittman.com

DOCKET FILE COPY ORIGINAL

April 4, 2000

RECEIVED
APR - 4 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY


Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-B204
Washington, DC 20554

**Re: *Erratum*
Comments of Pegasus Communications Corporation
Inquiry Concerning Deployment of Advanced Telecommunications,
CC Docket No. 98-146**

Dear Ms. Salas:

Pegasus Communications Corporation ("Pegasus"), through its attorneys, hereby submits the attached *erratum* in the above-referenced proceeding. The comments previously filed by Pegasus contained several typographical errors, which have been corrected in this revised version. In the public file for this docket, please replace Pegasus' original comments with the comments contained in this *erratum*. If you have any questions, please contact the undersigned.

Very truly yours,


Stephen J. Berman

No. of Copies rec'd 013
List ABCDE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

ORIGINAL

RECEIVED
APR - 4 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Inquiry Concerning Deployment of)
Advanced Telecommunications)
Capability to All Americans in a Reasonable)
And Timely Fashion, and Possible Steps)
To Accelerate Such Deployment Pursuant)
To Section 706 of the Telecommunications)
Act of 1996)

CC Docket No. 98-146

COMMENTS OF PEGASUS COMMUNICATIONS CORPORATION

Pegasus Communications Corporation ("Pegasus") is pleased to respond to the questions raised in the Commission's Notice of Inquiry in the above-referenced proceeding on Advanced Telecommunications.^{1/} Pegasus is the nation's third largest provider of direct broadcast satellite service and the eighth largest provider of multichannel video services, including satellite and cable. Pegasus is the only multichannel video provider focused exclusively on rural and underserved areas of the country, and its core vision for future growth is the provision of additional advanced digital services to rural and underserved areas. Pegasus is therefore uniquely qualified to address a number of the issues at the heart of this proceeding.^{2/}

^{1/} Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant To Section 706 of the Telecommunications Act of 1996, Notice of Inquiry, CC Docket No. 98-146 (rel. Feb. 18, 2000).

^{2/} Pegasus (www.pgtv.com) is one of the fastest growing media companies in the United States. It is the largest independent provider of DBS services to rural parts of the U.S. on the DIRECTV platform, serving approximately 1.1 million DBS subscribers in 41 states through a network of more than 2,500 retailers in rural areas. Pegasus is also a broadcaster operating and/or programming ten TV stations serving 2 million TV households in smaller markets in 10 states affiliated with FOX, UPN, and the WB.

Discussion

In adopting policies to promote the deployment of Advanced Telecommunications services to rural areas, the Commission can and must aim high. It must set aggressive goals and do everything possible to facilitate industry's achievement of those goals. In this time of breathtaking technological advancement, in which the margins of possibility are continually moving forward, setting expectations too low would be folly. Interim technologies -- predominantly those that deliver sub-megabit/second download speeds or which rely on a POTS return path -- will continue to play a vital role by bringing greatly improved digital data services to more Americans, and whetting appetites for true broadband and other advanced digital services. The Commission should encourage deployment of those interim technologies. But it should not conclude that those gap-bridging systems actually constitute the "advanced telecommunications capability" contemplated in the 1996 Telecommunications Act.

An aggressive standard is necessary as it is almost impossible to predict what technology will offer and which of those offerings the market will demand. If the Commission sets the bar too low, that standard will misguide the development of future policy decisions. When the Commission makes hard calls in allocating spectrum, a low standard may erroneously lead the Commission to conclude that the foremost objective of fostering advanced services to all Americans has been achieved, when in fact the divide between rich and poor, or between urban and rural, may have grown. If the Commission concludes that 200 kbps constitutes advanced broadband services, its Bureaus will be constrained in allocations and licensing only to enable that level of service everywhere. Inevitably, the excess will migrate to the centers of money and population. The market will ensure that the wealthy urban dweller will always have access to the best technology has to offer. In the absence of a high standard for everyone else, the

Commission may find that even as service to the rural areas improves, the state of the art improves far more, and the digital divide grows wider.

What is advanced telecommunications capability? The 1996 Act defined advanced telecommunications capability as “high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.” In the view of Pegasus, that generally remains a good standard today, (although already switching in the traditional sense is already far less crucial to the provisioning of advanced services than it was in 1996). Yet “advanced” and “high quality” are themselves relative terms, and four years hence they will connote services that are very different than what we imagine today. In order to survive the test of time, it is all but impossible today to define “advanced” in terms of a specific amount of available bandwidth. Rather than arbitrarily specifying 200 kbps duplex, or 1 Mbps downstream as “advanced,” the Commission should periodically adjust its benchmark to reflect service deployment in areas where regulatory policy has less effect. Whether the Commission interferes or facilitates, the demand side of the economic equation ensures that the newest “advanced” services are deployed with reasonable promptness into commercial centers and affluent residential areas. When the market raises the bar in these areas, the Commission’s policies should be adjusted to allow the bar to be raised everywhere else.

The good news is that within the next two to three years advanced telecommunications service parity for all parts of the country is attainable, and very little is actually needed of the Commission. If the FCC sets the stage, the market will bring up the lights. Technology has enabled a new telecommunications paradigm, but to achieve it we have to stop thinking in the old paradigm. In the old paradigm, much of rural America would not even have telephone

service but for the universal service fund. In the new paradigm, a ranch hand in Montana can have full, scalable, low-cost broadband service as soon as (or possibly before) a telecommunications analyst living in an apartment on Park Avenue. In fact, the Montana ranch hand can have a choice of providers! If the Commission thinks and acts otherwise, its policies will be self-fulfilling.

The case has been proven by the DBS industry. Today, millions of rural Americans receive digital television service -- from their choice of provider -- that is visibly and audibly superior to the service received by tens of millions of cable subscribers. Satellite technology can, and eventually will, do the same for advanced, digital, broadband service. As explained below, the FCC can take a few very simple actions, literally within days, that will both expedite this important service and improve its quality.

The NOI asks if advanced telecommunications services are being deployed at a reasonable pace. Again, "reasonable" depends on expectations. Despite the isolated examples cited in the NOI, true duplex, broadband service is essentially unheard of in rural America. The wireline plant -- both cable and telco -- in rural areas requires upgrades that are not economically feasible and that may not be technically feasible in many cases, given the low population density. As with DBS, satellite platforms are the answer.

The NOI asks what the FCC can do to expedite service. Broadly speaking, it should look back at what it did to enable the fabulously successful DBS service. It identified and allocated sufficient spectrum. It recognized the technical impossibility of sharing between DBS and terrestrial services, since DBS dishes would be deployed ubiquitously, and it shifted terrestrial services from the band. Finally, it stuck to its plan. Although the lead times for launch of a satellite service are inherently longer than for deployment of terrestrial services, the Commission

did not yield to pressure to re-allocate that spectrum to terrestrial users pending launch of the DBS service. The result is one of the best successes of policy and technology in history.

The FCC can and should follow a similar path to enable launch of ubiquitous, nationwide broadband service with a consumer focus. Much of the work has been done. Although Ku-band satellites may provide a gap-bridging measure, the full service broadband opportunity for consumers, and for rural Americans in particular, lies in the Ka band. The simple, swift, and correct resolution of a few long-overdue allocation and licensing matters regarding the Ka band would do more to bring advanced broadband services to rural America than anything else the Commission can do.

First, the Commission should close out the Ka-band downlink allocation proceeding by allocating, as proposed, 750 MHz of downlink spectrum to the satellite service on an exclusive primary basis.^{3/} Consumer services are likely to remain highly asymmetrical, and having 750 MHz of unshared downlink spectrum is crucial to meeting the ever growing expectations of consumers -- and to allowing rural service to keep pace with the most advanced urban offerings.

Second, clear the dead wood out of the first licensing round so that the second-round applicants --including Pegasus -- can be licensed. Pegasus is a "second-round" applicant for five Ka-band orbital positions, three of which would be capable of providing service to rural areas in the U.S. Unlike the first round, in which the FCC waived its anti-warehousing rules (promising to strictly enforce the milestones) and allowed a handful of applicants to take the vast majority of the available Ka-band orbital slots, the second-round applicants are vying for the few remaining

^{3/} See Notice of Proposed Rulemaking, Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite Service Use, IB Docket No. 98-172 (rel. Sept. 18, 1998).

slots, all of which are encumbered in some fashion or otherwise less desirable.

Pegasus has over \$500M cash on hand, excellent access to capital, a vast network of rural retailers and satellite installers, and extensive residential customer care facilities. All it needs to make this service a reality is authorization from the FCC. By enforcing its milestone requirements for first-round licensees, it should be practical for the second-round applicants to develop a sharing plan that will permit the speedy licensing of new systems.^{4/} Only a tiny fraction of the first-round licenses are supported by any development efforts at all, and those focus overwhelmingly on urban areas and enterprise customers. Most of the first-round licenses are being sold for profit or, worse, simply being warehoused.

Today, the promise of the Ka band remains unfulfilled, but Commission could fundamentally alter the landscape, and expedite broadband service to rural America, simply by allocating the full amount of downlink spectrum needed for residential service, nullifying first-round licenses that are being warehoused, and assigning those licenses to qualified second-round applicants.

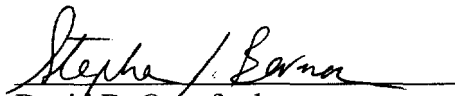
^{4/} The milestones for some of the first-round licenses -- those that had applied for inter-satellite links ("ISLs") -- were tolled pending assignment of ISL spectrum. The licensees (at FCC urging) agreed on an ISL assignment scheme more than two years ago and submitted the plan to the FCC, but the Commission still has not assigned ISLs, which of course would allow the milestones to run. However, the ISLs apparently are not the reason that licensees have not built -- from recent FCC filings it does not appear that any of the first-round applicants have current plans to use ISLs. Under these circumstances, there is no basis for continued forbearance on the milestones.

Conclusion

The NOI asks what steps the Commission can take to expedite the provision of advanced telecommunications services to all Americans. Rarely does an agency ask a general question for which the answer is so specific, for which the regulatory action is so minimal, and for which the desired result is so obtainable. By resolving a single, ripe rulemaking proceeding, and by taking a few by-the-book licensing actions (that also happen to be just and equitable), the Commission can go a long way towards achieving the goal of bringing advanced telecommunications capability to all Americans. Pegasus respectfully requests that these actions be taken.

Respectfully submitted,

PEGASUS COMMUNICATIONS CORP.

A handwritten signature in black ink, appearing to read "Stephen J. Berman", is written over a horizontal line.

David D. Oxenford

Bruce D. Jacobs

Stephen J. Berman

Fisher Wayland Cooper

Leader & Zaragoza L.L.P.

Suite 400

2001 Pennsylvania Ave., N.W.

Washington, D.C. 20006

(202) 659-3494

March 20, 2000